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TAGS: [SNAR](#) [PREL](#) [KCRIM](#) [PGOV](#) [AR](#)  
SUBJECT: ARGENTINA: SUPREME COURT RULES FOR LIMITED  
DECRIMINALIZATION OF NARCOTICS FOR PERSONAL USE

REF: Buenos Aires 0811

¶1. (U) Summary: As anticipated for many months (reftel), the Argentine Supreme Court ruled August 25 against criminal penalties for the personal possession of marijuana in a case involving five young adults arrested with marijuana cigarettes in 2006. The court ruling appears to open the door to decriminalization of personal possession of other drugs as well. The justices restricted decriminalization to cases involving small amounts, in which no third party is harmed, and in which the possession occurs in a private place. They called on the Government to make changes along these lines to national drug laws and also to increase resources for treatment and for fighting traffickers. Reaction by the church, center-right political leaders, some pro-government provincial leaders, and several commentators was critical, focusing on the negative message the decision would send to youth and on the difficulties it might cause for law enforcement efforts against traffickers. Within Government, moreover, there remain concerns about the effects of decriminalization. End Summary.

¶2. (U) As had been long anticipated based on statements to the press by individual Supreme Court Justices, the Supreme Court ruled August 25, in a unanimous seven vote decision, to acquit five young adults arrested in 2006 after purchasing marijuana cigarettes from dealers. (Note: In 2008, a lower court upheld the convictions of the three dealers also arrested in the case. The Supreme Court ruling did not touch their convictions, signaling that the GOA continues to prosecute dealers and traffickers. End Note) The ruling, if applied broadly, may decriminalize personal possession of any narcotic (not only marijuana) in cases where the use is private and individual and where no third parties are harmed. (Note: Precedent in the Argentine legal system is not as clearly defined as it is in the United States, and cases involving other drugs may have to be considered individually by lower courts and then again by the Supreme Court. End Note)

¶3. (U) In explaining the ruling, Court President Lorenzetti went far in marking a sphere of personal freedom from state authority, saying that the Court recognized that "every adult is sovereign to take free decisions about the way in which they live." The Justices pointed to Article 19 of the Argentine Constitution, guaranteeing personal liberties, to support the ruling. Justice Carlos Fayt emphasized his view that the ruling indicated that the solution to drug abuse lay through treatment rather than sanctions, while Justice Raul Zaffaroni gave attention to an "enormous expense of effort, time and money by law enforcement against insignificant" cases of possession. Justice Enrique Petracchi and others called on

the state to increase efforts against traffickers and to find additional resources for prevention and treatment of addiction.

14. (U) The justices spoke in broad terms against the current drug law's emphasis, in its application, on small consumers. Ninety percent of narcotics cases, they said, had been brought against small-time users, leading to stigmatization and unjustified inconveniences against those arrested. Still, the justices emphasized that to be "not punishable," any use and possession had to be private and of a small quantity. Justices Fayt and Carmen Argibay further emphasized that the possession could not be "ostentatious, that is to say, that the individual has not exhibited the drug."

#### Precedent and Application

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15. (SBU) GOA officials, particularly Cabinet Chief Fernandez, have long made clear their intention to send Congress a legislative proposal to decriminalize possession of small quantities, and this court ruling appears to give further impetus to that. At present, the draft legislation is being developed by a commission of experts organized by the executive, prior to submission to the Congress. Until drug laws are changed, police will still be expected to arrest anyone possessing marijuana or other drugs. Only judges can make a determination to dismiss a specific case based on the Supreme Court's ruling and arguments. The Supreme Court's ruling, however, does appear to apply to drugs other than marijuana, so the ruling may be quickly challenged or built on in other cases. The ruling may also have an effect on the willingness of law enforcement to

make arrests in cases involving small amounts of possession. One citizen quoted in the press pointed to an upside of that, saying that police officers would request fewer bribes.

#### Supporters and Critics React

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16. (SBU) The Government's Chief of Cabinet Anibal Fernandez, a vocal proponent of decriminalization during his previous tenure as Minister of Justice, Security and Human Rights, praised the court decision and reemphasized the GOA's intention to fight trafficking. "It is along the lines of what we have been urging," he said, "reversing the repressive policies applied by Nixon and then adapted with such enthusiasm by Lopez Rega" [an Argentine Minister of Social Welfare in the early seventies blamed for a variety of human rights abuses], "policies that have not succeeded in reducing cultivation or consumption, not even by a bit, anywhere in the world." Op-Ed columnists supporting the Government's position echoed the Court's statements, saying the country would be better served by an emphasis on prevention, treatment and law enforcement efforts against trafficking organizations.

17. (SBU) The new Minister of Justice, Security and Human Rights, Julio Alak, asked the CDA in an August 27 pull-aside what he thought the impact of decriminalization might be. Alak said that he would be interested in any studies showing effects on consumption of decriminalization measures in other countries. He also requested information on how small possession offenses are dealt with in the United States. (Note: Members of post's Law Enforcement Working Group have begun gathering information along these lines to share with the Minister; post welcomes additional materials, particularly Spanish-language documents. End Note)

18. (SBU) Critics of the measure included the Catholic Church's Pastoral Commission on Addictions led by Bishop Jorge Lozano. Lozano said that while the Commission understood the reasons behind the decision, the country would not overcome the "tragedy of drug abuse, particularly among youth and adolescents," by "facilitating consumption and by making something that is bad appear to be acceptable." He focused on the impact in poorer neighborhoods, arguing that youth would be less reluctant to try marijuana, which could lead to harder drugs and/or addiction. Another critic, the presidentially-appointed head of the National Commission for Drug Treatment and Prevention (SEDRONAR), Jose Granero, also dissented, arguing that the ruling implied it "was OK to use drugs."

¶9. Buenos Aires Mayor Mauricio Macri, of the opposition center-right PRO party, called the Supreme Court's decision an "error." He linked his critique to the popular concern over rising crime, saying that drug use was "intimately tied" to delinquency and crime. Another PRO party leader, national Deputy Eugenio Burzaco, argued that the decision would diminish law enforcement efforts against trafficking because most sales occurred in small quantities and the ruling would make it hard to address these transactions.

¶10. (U) Prominent Union-Pro Deputy Elect Francisco de Narvaez said that the ruling would aid traffickers, arguing that "many countries that have taken this step have had to reverse it later because it promoted consumption, insecurity, and violence." His Congressional ticket-mate Felipe Sola said that Argentina was "not prepared" to manage a decriminalization regimen and that the Justices were not living in the real Argentina, the "conurbana" of poorer suburbs surrounding Buenos Aires. From beyond Buenos Aires, reaction appeared to be mixed but mostly critical, with even some nominally pro-Kirchner figures like Tucuman Governor Alperovich calling the decision ill-advised and likely to lead to more consumption.

Comment

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¶11. (SBU) While GOA leaders and the Supreme Court make a valid argument over the lack of sufficient resources in Argentina to help drug addicts, it is not clear that the Supreme Court's ruling will elicit any real increase in attention to this deficit. In the meantime, the country will face new law enforcement challenges in addressing rapidly rising consumption (reftel). We are not concerned that the ruling will diminish our important bilateral collaboration against drug trafficking and will make this plain if

asked by press. At the same time, however, the ruling's potential impact on local demand warrants attention, as does the government's response in terms of improving its prevention and treatment record. The request for more information from the Justice Minister gives us an excellent opportunity to share our views on the subject with a key GOA decision-maker.

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